

Court File No. CV-22-0062682-0000

FORM 4F
COURTS OF JUSTICE ACT

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

RANDY HILLIER

Applicant

-and-

**HIS MAJESTY THE KING IN RIGHT
OF THE PROVINCE OF ONTARIO**

Respondent

NOTICE OF CONSTITUTIONAL QUESTION

The Applicant intends to question the constitutional validity of section 1(1)(c) of Schedule 4 (Shutdown Zone) of Ontario Regulation 82/20 (*Rules for Areas Under Stage One*), and any amendments thereto, established under the *Reopening Ontario (A Flexible Response to Covid-19) Act, 2020*, S.O. 2020, c. 17 (“**ROA**”) (the “**Outdoor Gatherings Restrictions**”), section 1(1) of Schedule 1 of Ontario Regulation 265/21 (*Stay-at-Home Order*), and any amendments thereto, under the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, (“**EMCPA**”)(collectively, the “**Stay-at-Home Order**”), and section 10(1)(a) and 10.1(1) of the *ROA* (collectively, the “**Offence Provisions**”). The Applicant asserts that the outdoor gathering restrictions and Stay at Home Order violated his freedom of expression guaranteed by section 2(b), freedom of peaceful assembly by section 2(c), and freedom of peaceful association by section 2(d)

of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”), and that this violation was not justified under section 1 of the *Charter*.

The question is to be argued:

☒ In person

☐ By telephone conference

☐ By video conference

at the following location:

330 University Avenue, Toronto, Ontario, M5G 1E6, on 27th and 28th day of July, 2023 at 10:00 AM.

The following are the material facts giving rise to the constitutional question: Please see attached Notice of Application.

The following is the legal basis for the constitutional question:

Charter Violations and Statutory Deficiency

1. The restrictions as part of the Stay-at-Home Order Ontario Regulation 265/21, Outdoor Gathering Restrictions (Ontario Regulation 82/20) and Offence Provisions of the *ROA*:
 - a. Infringed the right of the Applicant to be able to peacefully assemble to demonstrably express himself.
 - b. Violated the right to peaceful assembly by arbitrarily restricting everyone to remain in their residence at all times, unless leaving their residence for what the Respondent considered necessary or “essential” purposes.
 - c. The very purpose of the Stay-at-Home Order Ontario Regulation 265/21 was to confine everyone to their residences, which thereby prevented the peaceful assembly and association of citizens, rights which are guaranteed under sections 2(b), 2(c) and 2(d) of the *Charter*. Section 2(c) protects the physical gathering together of people from unlawful restriction by government.

2. The stated purpose of the *EMCPA*, and by extension the *ROA*, is to promote the public good by protecting the health, safety and welfare of the people of Ontario in a manner that is subject to the *Charter*, however the Stay-at-Home Order, Outdoor Gathering Restrictions, and Offence Provisions expressly limits this purpose by undermining the right to the freedom of expression, to peacefully assemble and to associate, as guaranteed under section 2 of the *Charter*.
3. The Applicant attempted to exercise his right to peaceful assembly, as part of his rights and freedoms guaranteed under the *Charter* but faced legal consequences under a regulation that was unconstitutional and should be declared to be so.

Dated this 5th Day of October 2022.



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(Court file no.)

FORM 14E

Courts of Justice Act

NOTICE OF APPLICATION

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

RANDY HILLIER

Applicant

-and-

**HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF ONTARIO**

Respondent

APPLICATION UNDER the *Canadian Charter of Rights and Freedoms*, s 24(1), Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 and Rule 14.05 of the *Rules of Civil Procedure*, RRO 1990, Reg 194.

(Court seal)

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing:

- ☒ In person
- ☐ By telephone conference
- ☐ By video conference

at the following location:

330 University Avenue, Toronto, Ontario, M5G 1E6 on the 27th and 28th (day), of July, 2023
(date), at 10:00 AM (time) (or on a day to be set by the registrar).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date

Issued by

Local registrar

Address of court office:
Toronto Superior Court of Justice
330 University Ave,
Toronto, ON M5G 1E6

TO THE ATTORNEY GENERAL OF ONTARIO
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APPLICATION

THE APPLICANT MAKES APPLICATION FOR:

1. A Declaration pursuant to section 52(1) of the *Constitution Act* that section 1(1) of Schedule 1 of Ontario Regulation 265/21 (*Stay-at-Home Order*) and any related amendments under the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, (collectively, the “**Stay-at-Home Order**”) unjustifiably infringe rights and freedoms guaranteed under s.2(b), 2(c), and 2(d) of the *Charter* and therefore has “no force or effect.”
2. A Declaration pursuant to section 52(1) of the *Constitution Act* that section 1(1)(c) of Schedule 4 (Shutdown Zone) of Ontario Regulation 82/20 (*Rules for Areas Under Stage One*), and any related amendments, established under the *Reopening Ontario Act (A Flexible Response to Covid-19) Act*, 2020, S.O. 2020, c. 17 (“*ROA*”) (collectively, the “**Outdoor Gatherings Restrictions**”) unjustifiably infringe rights and freedoms guaranteed under s.2(b), 2(c), and 2(d) of the *Charter* and therefore has “no force or effect.”
3. A Declaration pursuant to section 52 (1) of the *Constitution Act* that section 10(1)(a) and 10.1(1) of the *ROA* (collectively, the “**Offence Provisions**”) and any related amendments unjustifiably infringe rights and freedoms guaranteed under s. 2(b), 2(c), and 2(d) and therefore has “no force or effect.”
4. A Declaration pursuant to section 24(1) of the *Charter* that the “Stay-at-Home Order” under the *Emergency Management and Civil Protection Act* unjustifiably infringe rights and freedoms guaranteed under s.2(b), 2(c), and 2(d) of the *Charter* and therefore are unconstitutional.

5. A Declaration pursuant to section 24(1) of the *Charter* that the “Outdoor Gathering Restrictions” under the *Reopening Ontario Act* unjustifiably infringe rights and freedoms guaranteed under s.2(b), 2(c), and 2(d) of the *Charter* and therefore are unconstitutional.
6. A Declaration pursuant to section 24(1) of the *Charter* that the “Offence Provisions” under the *Reopening Ontario Act* unjustifiably infringe rights and freedoms guaranteed under s.2(b), 2(c), and 2(d) of the *Charter* and therefore are unconstitutional.
7. A Declaration that the Stay-at-Home Order does not meet the statutory criteria set out in subsections 7.0.2(1), (2) and (3) of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9 (“*EMCPA*”) and are therefore *ultra vires*.
8. A Declaration that the “Outdoor Gathering Restrictions” made under the *Reopening Ontario Act* are an improper delegation of authority and are therefore *ultra vires*.
9. An Order abridging the time for the service and filing of this Notice of Application, the Notice of Constitutional Question, and supporting materials, if necessary.
10. Such further and other relief this Honourable Court permits.

GROUND FOR THE APPLICATION ARE:

The Background:

11. On or about March 17th, 2020, the Ontario cabinet, by way of an Order in Council declared a state of emergency under the *EMCPA* in response to the outbreak of a communicable disease, namely COVID-19.

12. Section 7.0.2 (2) of the *EMCPA* sets forth the criteria for emergency orders during a declared emergency, requiring the Lieutenant Governor in Council to believe that the orders are necessary to prevent serious harm, if the Lieutenant Governor in Council reasonably believes that:
- a) the harm or damage will be alleviated by the Order; and
 - b) making an Order is a reasonable alternative to other measures that might be taken to address the emergency.
13. Section 7.0.2 (3) of the *EMCPA* sets out the limitations on emergency orders in that,
- a) The actions authorized by an order shall be exercised in a manner which, consistent with the objectives of this order, limits their intrusiveness.
 - b) An order shall only apply to the areas of the Province where it is necessary.
 - c) Subject to section 7.0.8, an order shall be effective only for as long as is necessary
14. By Order in Council on March 24, 2020, (Ontario Regulation 82/20) Ontario ordered the closing of ‘non-essential’ businesses and institutions.
15. The state of emergency and the regulations (as varied from time to time) made pursuant to the *EMCPA* were extended by both the cabinet and the legislature periodically until approximately July 24, 2020, at which time the state of emergency was ended, and the *ROA* came into force.
16. Pursuant to section 2 of the *ROA*, certain regulations made under the *EMCPA* were continued, amended, and renewed regularly as though there was still a state of emergency in effect, which included restrictions on gatherings. The *ROA* did not include the same limitations required to be met by the Government as the *EMCPA*.

17. On or about December 26, 2020, Ontario placed the entire province under a “shutdown” with respect to Ontario Regulation 82/20, which severely restricted many of the activities of Ontarians, including restricting indoor organized public events and social gatherings, and prohibiting indoor and outdoor dining, requiring restaurants, bars and other food or drink establishments to operate by take out, drive-through, and delivery only. Numerous businesses were granted exemptions including “big box” or discount retailers and liquor stores, provided they limited the number of persons inside to 25% of their building capacity; warehouses and distribution centres; various manufacturing facilities; construction activities; and fitness centres catering to “elite” athletes.
18. On or about January 12, 2021, the Province of Ontario was once again placed under a state of emergency under section 7.0.1 (1) of the *EMCPA*, which lasted until approximately February 9, 2021, and provisions of both the *EMCPA* and the *ROA* were applicable during this period. The *ROA* continued to be in force, with various regions of the province moving in and out of certain “zones”. Each public health unit could move its jurisdiction in or out of more severe restrictions, depending on certain metrics, which included hospital system capacity, outbreaks, reproduction rate, and public health system capacity.
19. On or about April 8, 2021, the Province of Ontario declared a third provincial emergency under section 7.0.1(1) of the *EMCPA* and issued a province-wide Stay-at-Home Order Ontario Regulation 265/21 under the *EMCPA* requiring everyone to remain at home except for “essential” purposes, such as going to the grocery store or pharmacy, accessing health care services, for outdoor exercise or for work that could not be done remotely.

20. The Stay-at-Home Order restricted organized public events or social gatherings with no exceptions and required everyone to remain at home except for essential purposes, such as to go to the grocery store or pharmacy, to access health care services, for outdoor exercise, or for work that could not be done remotely. Ontarians were forced to limit their daily contacts to the people they lived with.
21. The Province of Ontario failed to provide a fixed timeline for the removal of these restrictions.
22. On April 8th, 2021, where, as a result of the Stay-at-Home Order, there was a complete ban on peaceful assembly, with no alternatives available in order to exercise the right to protest peacefully, a peaceful assembly took place at the South Bank Bistro Restaurant located at 15 Clothier Street, North Grenville in Brockville, Ontario. This peaceful assembly was in response to the declaration of the Stay-at-Home order and the adverse impact it would have on society, especially on small businesses. Mr. Hillier attended this protest after he was invited as a guest and welcomed to speak at the protest.
23. The Stay-at-Home Order Ontario Regulation 265/20 would be extended to May 20th, 2021, along with the emergency order invoked under section 7.0.1 of the *EMCPA*.
24. On May 1st, 2021, as the Stay-at-Home Order Ontario Regulation 265/21 had been extended, the complete ban on social gatherings continued, leaving Ontarians with no alternatives available to exercise the right to protest peacefully. In response to these measures, another protest took place at the Eastern Health Unit on 1000 Pitt Street, in Cornwall, Ontario. Mr. Hillier attended this protest after he was invited as a guest speaker and provided a speech to the attendants.

25. As a result of attending these peaceful protests during the Stay-at-Home Order Ontario Regulation 265/21, with the complete ban on social gatherings in public, Mr. Hillier is charged with failing to comply with a continued Section 7.0.2 Order, contrary to Section 10(1)(a) of the *Re-Opening Ontario Act*, 2020 – O.Reg 82/20 – Rules for Areas in Stage 1. Mr. Hillier is also charged as an organizer for both charges under section 10.1(1) of the *ROA* with respect to O.Reg 82/20 – Rules for Areas in Stage 1.
26. The Stay-at-Home Order Ontario Regulation 265/21 and its restrictions on the fundamental freedoms of the Applicant and all Ontarians continued unabated for approximately 3 months, with the Applicant and the rest of Ontarians having had no clear benchmark to anticipate an end to the infringement of their liberties.
27. Non-compliance can result in charges under the *Reopening Ontario Act* and serious penal consequences. Maximum penalties include fines of up to \$100,000 and up to a year in jail for an individual; up to \$500,000 and up to a year in jail for an individual who is a director or officer of a corporation; and up to \$10 million for a corporation.
28. Under section 10.1 (3) of the *ROA*, a person who is convicted of organizing a public event or gathering is liable to a minimum fine of \$10,000 and a maximum of \$100,000.
29. The charges against Mr. Hillier are still outstanding and they have been adjourned pending the outcome of this case.

The Applicant

Mr. Randy Hillier

30. At the time the Applicant, Randy Hillier, was charged, he was a 64-year-old Member of Provincial Parliament (“**MPP**”) and had been since 2007. Mr. Hillier is now retired.
31. Prior to becoming an MPP, Mr. Hillier was a property rights activist and assisted in the creation of local landowners’ groups. Mr. Hillier was concerned about the impact that these restrictions had on businesses especially small business owners.
32. As a member of Provincial Parliament, Mr. Hillier was especially concerned about the province-wide shutdown of society and the adverse impact it was having on the rights and freedoms of Ontarians to gather in a public space and to peacefully assemble.
33. It is Mr. Hillier’s position that the rule of law, his constitutional rights and all Ontarians are not suspended by the declaration of a public health crisis. The Constitution, both written and unwritten, continues to apply to all legislation and government decisions and operates to protect the fundamental freedoms and civil rights of all Ontarians, notwithstanding the presence of an infectious illness.

Charter Violations and Statutory Deficiency:

34. The restrictions as part of the Stay-at-Home Order Ontario Regulation 265/21, Outdoor Gathering Restrictions (Ontario Regulation 82/20) and Offence Provisions of the *ROA*:
- a) Infringed the right of the Applicant to be able to peacefully assemble to demonstrably express himself by forcing him to stay home.

- b) Violated the right to peaceful assembly by arbitrarily restricting everyone to remain in their residence at all times, unless leaving their residence for what the Respondent considered necessary or “essential” purposes.
- c) The very purpose of the Stay-at-Home Order Ontario Regulation 265/21 was to confine everyone to their residences, which thereby prevented the peaceful assembly and association of citizens, rights which are guaranteed under sections 2(c) and 2(d) of the *Charter*. Section 2(c) protects the physical gathering together of people from unlawful restriction by government.

35. The stated purpose of the *EMCPA*, and by extension the *ROA*, is to promote the public good by protecting the health, safety and welfare of the people of Ontario in a manner that is subject to the *Charter*, however the Stay-at-Home Order, Outdoor Gathering Restrictions, and Offence Provisions expressly limits this purpose by undermining the right to the freedom of expression, to peacefully assemble and to associate, as guaranteed under section 2 of the *Charter*.

36. The Applicant attempted to exercise his right to peaceful assembly, as part of his rights and freedoms guaranteed under the *Charter* but faced legal consequences under a regulation that was unconstitutional and should be declared to be so.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF
THE APPLICATION:**

- 37. Affidavit of Randy Hillier, to be sworn or affirmed at a later date;
- 38. Additional affidavit or expert evidence, to be sworn or affirmed at a later date; and

39. Such further and other documentary evidence that the Honourable Court may permit.

June 9th , 2022

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Court File No./N° du dossier du greffe : CV-22-00682682-0000

OF THE PROVINCE OF ONTARIO

Applicant

Respondent

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

NOTICE OF APPLICATION

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Court File No./N° du dossier du greffe : CV-22-00682682-0000

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OF THE PROVINCE OF ONTARIO

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Court File No.: CV-22-0062682-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**NOTICE OF CONSTITUTIONAL
QUESTION**

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